Mat.App. 3/2005
BEFORE
HON'BLE MR. JUSTICE AFTAB H. SAIKIA
HON'BLE MR. JUSTICE P.K. MUSAHARY

Saikia. J,

Heard Mr. T.J. Mahanta and Ms. P. Bhattacharjee, learned counsel for the appellant as well as Mr. S.C. Biswas and Mr. P.J. Nath, learned counsel appearing for the respondent.

2. This matrimonial appeal has been directed against the Judgment and Order dated 14.12.2004 passed by learned Principal Judge, Family Court, Kamrup, Guwahati in F.C. (Civil) No. 147/2003, whereby the prayer of the appellant seeking dissolution of marriage by a decree of divorce against his wife, the respondent herein by filing a petition under Sections 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 (in short, 'the Act') was rejected holding that both the grounds of 'desertion' and 'cruelty' so set out by the appellant for divorce against his wife, the respondent could not be proved by the petitioner/appellant herein.

3. Impugning the Judgment & Order and also in support of the appeal, Mr. Mahanta, learned counsel for the appellant has submitted that the learned Judge misread and misconstrued the entire material evidence on record so adduced by the petitioner/appellant. In support of his case for divorce on the ground of 'desertion and cruelty' against the wife, it is further contended that the learned Judge ought not to have given weightage to the evidence adduced by the respondent. According to him, the respondent /wife of the petitioner/appellant admittedly left the house on 10.4.2000 after staying hardly for 4 months as their marriage was solemnized on 10.12.1999 and since then both the parties have been living separately. Even, there has been no occasion for their stay altogether during this long span of 7 years on her withdrawal from the society of her husband on 10.4.2000 for fulfilling the obligation of a marital tie. Under such factual premises, relying on the testimony of PW.1, the appellant himself and other witnesses i.e., PW.2, Sanjib Pal Mazumdar and PW.3, Subhas Karmakar and even of DW.1, the respondent/wife, he has argued that it is a fit case to hold that marriage between the parties has broken down irretrievably and the appellant is entitled to get a decree of divorce for dissolution of the marriage.

4. To drive home his submission, Mr. Mahanta has relied on the following decisions of the Apex Court including this High Court:

i) Durga Prasanna Tripathy -vs- Arundhati Tripathy (AIR 2005 SC 3297) equivalent to ((2005)7 SCC 353))

ii) Rup Jyoti Das -vs- Beron Saikia (2006 (1) GLT 426)

iii) Naveen Kohli -vs- Neelu Kohli (AIR 2006 SC 1675) equivalent to ((2006) 4 SCC 558))

iv) Samar Ghosh -vs- Jaya Ghosh ((2007) 4 SCC 511))

5. Applying ratio of those judicial pronouncements, particularly, Samar Gosh's case (supra), it is submitted by the learned counsel representing the appellant that since the respondent has been residing separately w.e.f. 10.4.2000, till date, having left the house of the appellant without any cogent or valid reason, the marriage between the parties has become dead and the parties are now left without any emotion, sentiment and feeling for each other within this long period of 7 (seven) years. That being the factual admitted position, the impugned separate living of the respondent from the appellant would in all probability amounts to cruelty and as such, the appellant is entitled get the marriage dissolved by way of decree of divorce.

6. Referring to paragraph-101 in Samar Ghosh's case (supra), it is contended that due to such long period of separation, the matrimonial bond between the parties is beyond repair. Now, the marriage simply becomes a fiction though supported by a by legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage, on the contrary, it shows scant regard for the feelings and emotions of the parties. This circumstance may also be accepted as 'mental cruelty'.

7. Per contra, refuting the submissions and statements advanced on behalf of the appellant and also in support of the impugned judgment and order, Mr. Biswas, learned counsel appearing on behalf of the respondent/wife has vehemently argued that respondent being an Indian Hindu married woman, has been all the time willing to continue her marital tie with the appellant and it is the appellant and his family who have been obstructing all along to allow her desires to continue their marital life with her husband/appellant. According to him, though it is an admitted fact that she has left the house of the respondent on 10.4.2000, she has had to leave her matrimonial house only on compulsion. As from the day one of their marriage, she has been tortured, humiliated and harassed by the appellant along with his family members by making dowry demand. Mr. Biswas has submitted that, it has come on the evidence, especially from the evidence adduced by the respondent as DW.1, DW.3, DW.4 and DW.5 that there has been a dowry demand of Rs.5 lacs by the husband and family members from the date of solemnization of the marriage. As her paternal family could not concede to such demand, the appellant has made out a concocted and fabricated case of 'cruelty and desertion'. Under such circumstances, according to Mr. Biswas, the learned Principal Judge of the Family Court has been correct and justified in refusing to grant decree of divorce on the ground of 'cruelty and desertion' and accordingly the impugned judgment deserves no interference by this Court.

8. We have given our anxious consideration to the extensive arguments so canvassed by the learned counsel representing the rival parties. Also minutely perused and appreciated the entire material evidence so placed on record.

9. Before taking up this matrimonial case for hearing, an attempt for reconciliation between the parties was made by this Court. Both the parties were directed to appear in person and the same was also complied with. Accordingly both the appellant and the respondent were present before this Court. They were personally heard in Camera in the chamber. Despite best efforts, eventually the conciliation failed and thereafter only this matter has been taken up for hearing.

10. It is seen from the evidence on record, particularly, PW.1, the appellant and DW.1, the respondent that the respondent/wife left her matrimonial house on 10.4.2000. To explain the reason for leaving the husband's house on that day, it is claimed by the wife that there has been constantly a dowry demand of Rs.5 lacs from the very date of the marriage and as a result of non-payment of such demand, there has been continuous and incessant hitch between the parties and when it has become unbearable upon her, on the day i.e. 10.4.2000, according to DW.1, she has been sent by her husband and mother-in-law to her father's residence at Guwahati to bring money with her along with one person namely, Basu. Interestingly, the said person 'Basu' has not been examined. On the other hand, PW.1 has stated that his wife/respondent from the very date of their marriage has been insisting him to have a separate house at Guwahati and there has been no love, affection and regards on her part to his house and family members. It is further asserted that within a period of four months of their marriage, on 10.4.2000, she has left his residence to Guwahati.

11. It is significant to note that although the witnesses from the respondent's side have claimed of making dowry for Rs.5 lacs from the appellant, there is nothing on record to show to support such demand save and except oral e

vidence. Even no attempt has been made by them to inform the competent authority as permissible under the law in-force against such demand of dowry and in the process after living her husband's house only for 4 months on 10.4.2000, the respondent has allowed herself to stay in her parent's residence on the plea that at no point of time her husband has ever approached her to take her back. Rather, it is her story that she along with her elder brother/relatives once went to Golaghat to stay in her husband's house but all of them were driven out by the family members of the husband. At the same time, the deposition of the plaintiff's side would demonstrate that on 14.5.2000, the respondent along with her elder brother and elder sister went to husband's residence at Golaghat and when husband's family wanted to settle the matter, they were informed that the chapter was closed and they had nothing to say and accordingly, they left the place.

12. It is seen from the record that only one incident has been exhibited on behalf of the respondent to substantiate her claim that she went to her husband's place to continue her marital relation by staying with her husband. Besides that, she could not place on record anything to support her claim that she has always been willing to continue her conjugal right with her husband. Reasons put forward for her stay at her paternal house since 10.4.2000 do not seem to impress us a wee bit. In view of the above, we are constrained to hold that the respondent had made no attempt to go back to her husband's place and she has been staying in her parent's house of her own will.

13. In Samar Ghosh's case (supra) the Apex Court has enumerated some instances of the human behaviour which may fall within the purview of 'mental cruelty' and those are as follows:

& &.(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the board parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to mental cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

14. Having gone through the above enumerations so outlined by the Supreme Court in Samar Ghosh’s case (supra), we are of the view that Clauses No. (i), (ii) and (xiv) as noticed above would be explicitly applicable in the case in hand.

15. Since the parties are living separately continuously for a long span of 7 years, we have no hesitation to hold that the marriage between the parties is beyond repair. The marriage now between the parties remains only in the name.

16. In taking this view, this Court has been inspired by the case of Naveen Kohli (supra), wherein the Supreme Court in paragraph-86 observed as under:

86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

17. In view of what has been discussed and observed above, we are of

the considered view that the appellant is entitled to get the marriage dissolved by way of decree of divorce. Accordingly, we allow the appeal by setting aside the impugned judgment of the Family Court and direct that the marriage between the parties i.e., the appellant and the respondent should be dissolved on the ground of 'cruelty and desertion' as enumerated in Sections 13 (1) (ia) and (ib) of the Act according to the provisions of the Act.

18. Given peculiar facts and circumstances of the case in its totality, to resolve the problem in the interest of all concerned and since the marriage has been dissolved as recorded above, it is ordered that the appellant/husband shall pay Rs. 5 Lacs (Rupees Five Lakhs) to the respondent/wife towards permanent maintenance. At this stage, Mr. Mahanta has prayed that the appellant may be permitted to pay the said amount at least in 4(four) instalments. Accepting the prayer, we direct the appellant to pay the amount aforementioned, to the respondent in 4(four) instalments within a period of 1(one) year from today i.e. on or before 30.9.2008. The amount above shall be deposited by the appellant with the Registrar General of the Gauhati High Court at Principal Seat and the respondent would be at liberty to withdraw this amount with interest on her proper identification. Be it made clear that in default of such payment within the stipulated period as indicated above, the appeal shall stand dismissed.

19. In the result, the appeal succeeds and stands allowed. However, considering the facts and circumstances of the case, there shall be no order as to costs.